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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,622	09/30/2003	Stephen Friend	66205-0001	4195

10291 7590 11/26/2004

RADER, FISHMAN & GRAUER PLLC  
39533 WOODWARD AVENUE  
SUITE 140  
BLOOMFIELD HILLS, MI 48304-0610

EXAMINER
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SZUMNY, JONATHON A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/674,622

Applicant(s)

FRIEND, STEPHEN

Examiner

Jon A Szumny

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

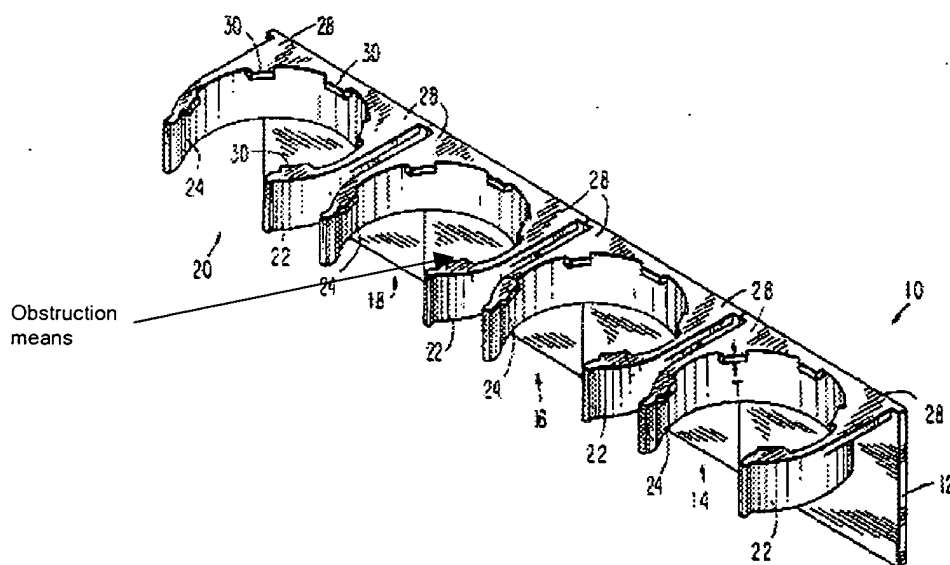
- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

This is the second office action for application number 10/674,622, Bottle Retainer, filed on September 30, 2003.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

*Claim Rejections - 35 USC § 102*

Claims 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 5,655,673 to Weterrings et al.



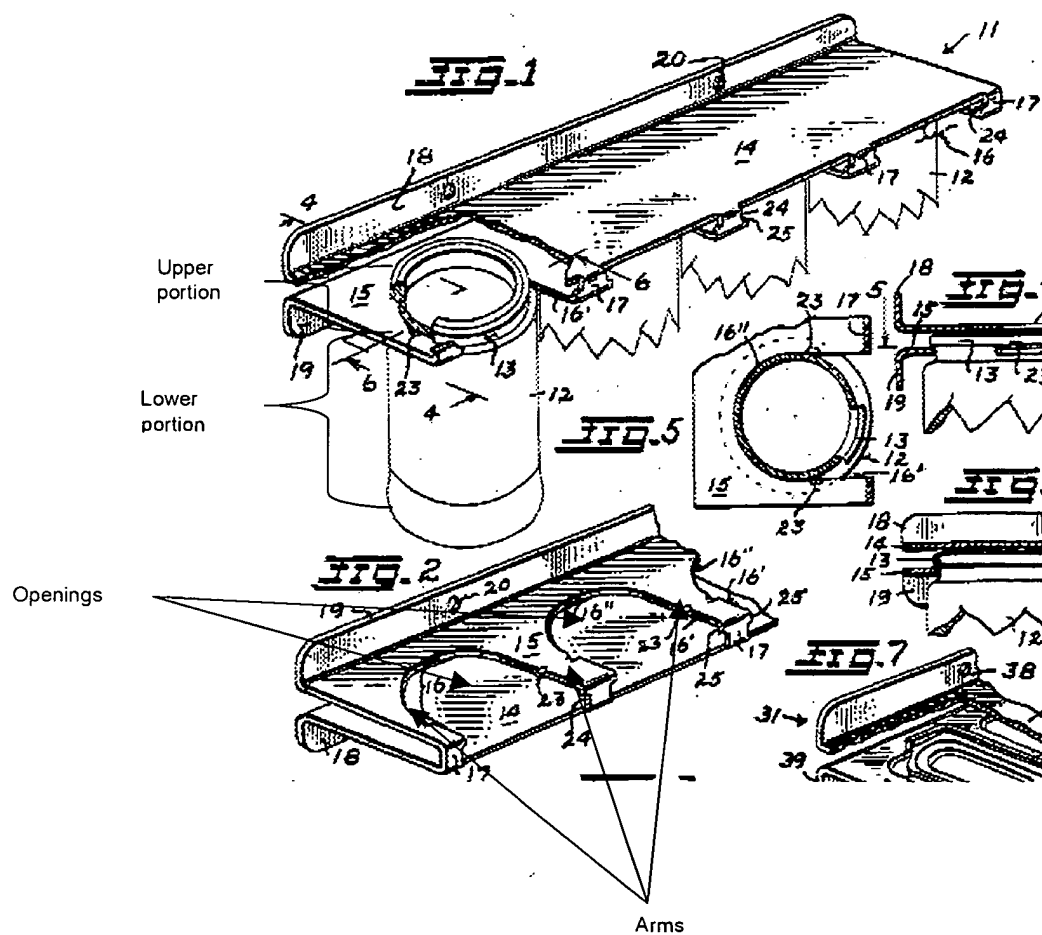
Weterrings et al. '573 discloses a retainer (above) comprising an affixing means (12) adapted to mount the retainer to a surface, receiving means (14,16,18,20, generally) inherently adapted to slidably receive at least one bottle (a bottle or the like is inherently slid in between

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the arms, also, see column 2, line 7), and obstruction means (above), wherein the receiving means further comprises bifurcated arms (22,24, above) wherein the arms an opening (between 22,24 above).

Claims 1, 2, 3, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent number 2,921,690 to Smith et al.



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Smith et al. '690 discloses a retainer (above) comprising a base having an affixing portion (19) and a retaining portion (15, generally), the affixing portion having a back side and a front side, the back side for mounting the retainer to a surface (column 2, lines 26-30), at least two generally horizontal, substantially parallel arms (above) extending from the base to form at least one unobstructed opening therebetween for slidably receiving the lower portion of a bottle (see above) with the upper portion of the bottle engaged by the arms to support the bottle within the at least opening, wherein the retaining portion further comprises at least three of the (above) that form at least two unobstructed openings inherently for slidably receiving bottles therein, wherein each of the arms has at least one raised obstruction (23) positioned on an upper portion of the arm to resist accidental bottle engagement, wherein the affixing portion is further inherently adapted to receive at least one fastener for mounting (through portion 20) the retainer to a surface, wherein the at least two openings are equivalent in size.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. '690 in view of Weterrings et al. '673.

Smith et al. '690 teaches the previous invention failing to specifically teach the affixing portion to further include an adhesive layer adapted to mount the retainer to a surface.

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Nevertheless, Weterrings et al. '673 divulges a bottle retaining comprising an affixing portion and a retaining portion, wherein the affixing portion further includes an adhesive layer (32) adapted to mount the retainer to a surface. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have replaced modified the affixing portion of Smith et al. '690 so as to have an adhesive layer as in Weterrings et al. '673 so as to provide an alternate and common mounting/affixing means that is well known in the art, as is taught by Weterrings et al. '673.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. '690 in view of Flynn '504.

Smith et al. '690 teaches the previous invention failing to specifically teach the a first of the openings to be smaller than a second of the openings. Nevertheless, Flynn '504 divulges a retainer having an affixing portion and a retaining portion wherein the retaining portion includes substantially parallel arms with openings therebetween wherein a first of the openings is smaller than a second of the openings. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified a first of the openings of Smith et al. '690 to be smaller than a second of the openings so as to allow a greater variety of various sized objects to be used with the retainer hence increasing the utility of the retainer.

### *Response to Arguments*

Applicant's arguments filed August 26, 2004 have been fully considered but they are not persuasive.

On the bottom of page 5 and top of page 6 of the remarks, the applicant alleges that the device of Weterrings et al. '673 does not allow for bottles or jars to be slidably inserted or

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removed therein or therefrom. The Examiner clearly disagrees. With reference to column 2, line 7 of Weterrings et al. '673, it is clearly stated that a jar (bottle) SLIDES downwardly.

Continuing, in the middle of page 6 of the remarks, the applicant erroneously states that Smith et al. does not disclose a bottle retainer capable of receiving a bottle from a vertical direction, *as permitted by the present invention as now claimed*. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., receiving a bottle from a vertical direction) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

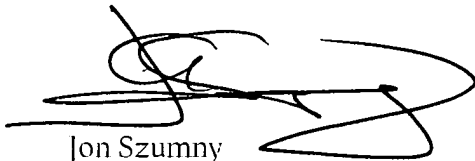
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is

(703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is

(703) 308-1113.

A handwritten signature in black ink, appearing to read 'Jon Szumny', with a large, stylized flourish extending from the end of the signature.

Jon Szumny  
Patent Examiner  
Technology Center 3600  
Art Unit 3632  
November 18, 2004